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Simmonds & Narita LLP

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SIMMONDS & NARITA LLP, a limited
liability partnership,

Plaintiff,

v.

JEFFREY SCHREIBER; SUZANNE E.
SCHREIBER; and DOES 1 through 50,
inclusive,

Defendants.

Case No. CV 08 2209 SI

**PLAINTIFF'S ANSWER TO
COUNTERCLAIMS**

AND RELATED COUNTERCLAIMS

Plaintiff and Counter-Defendant Simmonds & Narita LLP ("Plaintiff") states and alleges as follows for its Answer to the Counterclaims ("Counterclaims") of Defendants Jeffrey and Suzanne Schreiber ("Defendants"):

**FIRST CLAIM FOR RELIEF
(Professional Negligence)**

27. In responding to paragraph 27 of the Counterclaims, Plaintiff admits that it is a California limited liability partnership and further admits that Defendants Jeffrey and Suzanne

Schreiber are individuals. Except as so admitted, Plaintiff denies the allegations of paragraph 27 of the Counterclaims.

28. In responding to paragraph 28 of the Counterclaims, Plaintiff admits that an attorney-client relationship existed for a period of time between Plaintiff, on the one hand, and Jeffrey and Suzanne Schreiber, on the other hand, and that the representation was for the defense of the *Siemons v. Schreibers* lawsuit filed in Alameda County Superior Court. Except as so admitted, Plaintiff denies the allegations of paragraph 28 of the Counterclaims and avers that, to the extent the allegations constitute legal conclusions, no response is necessary.

29. In responding to paragraph 29 of the Counterclaims, Plaintiff denies the allegations in that paragraph.

30. In responding to paragraph 30 of the Counterclaims, Plaintiff denies that Defendants have suffered any harm or recoverable damages, and denies the remaining allegations of paragraph 30 of the Counterclaims.

SECOND CLAIM FOR RELIEF (Breach of Fiduciary Duty)

31. Plaintiff incorporates by reference its responses to Paragraphs 27 through 30 as set forth above.

32. To the extent the allegations of paragraph 32 of the Counterclaims call for a legal conclusion, Plaintiff alleges that no response is required. Plaintiff denies any remaining allegations of paragraph 32 of the Counterclaims.

33. In responding to paragraph 33 of the Counterclaims, Plaintiff denies the allegations in that paragraph.

34. In responding to paragraph 34 of the Counterclaims, Plaintiff denies that Defendants have suffered any harm or recoverable damages, and denies the remaining allegations of paragraph 34 of the Counterclaims.

SEPARATE AND ADDITIONAL DEFENSES

Plaintiff alleges the following additional or affirmative defenses to the Counterclaims in addition to the relief sought in Plaintiff's Complaint.

FIRST SEPARATE AND ADDITIONAL DEFENSE

The relief sought by the Counterclaims is barred, in whole or in part, in that the Counterclaims fail to state a claim upon which relief can be granted against Plaintiff.

SECOND SEPARATE AND ADDITIONAL DEFENSE

The relief sought by the Counterclaims is barred, in whole or in part, by the equitable doctrines of estoppel, waiver, and unclean hands.

THIRD SEPARATE AND ADDITIONAL DEFENSE

The relief sought by the Counterclaims is barred, in whole or in part, in that Defendants have failed to mitigate their alleged damages.

FOURTH SEPARATE AND ADDITIONAL DEFENSE

The relief sought by the Counterclaims is barred, in whole or in part, in that Defendants have not suffered any cognizable damage proximately caused by any alleged act or omission of Plaintiff.

FIFTH SEPARATE AND ADDITIONAL DEFENSE

The relief sought by the Counterclaims is barred, in whole or in part, in that Defendants' alleged damages, if any, were caused by acts and omissions of Defendants or of third parties over which Plaintiff had no control.

SIXTH SEPARATE AND ADDITIONAL DEFENSE

The relief sought by the Counterclaims is barred, in whole or in part, in that the injuries and damages alleged in the Counterclaims were caused by and/or were contributed to by Defendants' own acts, failures to act, and/or negligence, and that Defendants' recovery, if any, should be reduced by an amount proportionate to the amount by which said acts caused or contributed to said alleged injuries or damages.

SEVENTH SEPARATE AND ADDITIONAL DEFENSE

Defendants have engaged in conduct and activities sufficient to constitute a waiver of any alleged negligence, breach of duty, or any other conduct, if any, as set forth in the Counterclaims.

EIGHTH SEPARATE AND ADDITIONAL DEFENSE

The relief sought by the Counterclaims is barred, in whole or in part, in that any alleged damages claimed by Defendants are speculative.

NINTH SEPARATE AND ADDITIONAL DEFENSE

The damages alleged in the Counterclaims were proximately caused by or contributed to by the acts, or failures to act, of persons other than Plaintiff, and these acts or failures to act constitute an intervening and superseding cause of the damages and injuries alleged in the Counterclaims.

TENTH SEPARATE AND ADDITIONAL DEFENSE

If Plaintiff is found liable for any damages, the amount of recovery of any economic and non-economic damages against Plaintiff shall be calculated in accordance with the principles of California Civil Code section 1430, *et seq.*, and shall be no greater than the amount of damages in direct proportion to the fault of Plaintiff, if any, relative to the fault of other persons, firms, corporations, entities or organizations, including Defendants.

Plaintiff presently has insufficient knowledge or information on which to form a belief as to additional, unstated affirmative defenses. Plaintiff reserves the right to file an amended and/or supplemental Answer when such knowledge or information becomes available.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays as follows:

1. That the Counterclaims be dismissed, with prejudice and that Defendants take nothing by reason of their Counterclaims.
2. That Plaintiff be awarded its attorneys' fees, expenses and costs of suit incurred in defense of the Counterclaims; and
3. For such other relief as the Court deems just and proper.

Dated: August 21, 2008

SMITH LILLIS PITHA LLP

By:



DAMIEN P. LILLIS
Attorneys for Plaintiff Simmonds & Narita LLP